

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ED COLLINS,	:	CIVIL ACTION NO. 1:09-CV-1599
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
DANIEL BOYD, KEVIN FREIL,	:	
JAMES HART, SALLIE RODGERS,	:	
PENNSYLVANIA DEPARTMENT	:	
OF PUBLIC WELFARE,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 14th day of July, 2010, upon consideration of the report (Doc. 100) of the magistrate judge, recommending that the motion (Doc. 86) for preliminary injunctive relief, filed by plaintiff Ed Collins ("Collins"), be denied, and, following an independent review of the record, it appearing that Collins must establish that (1) he has a reasonable probability of success on the merits, (2) irreparable injury will result without injunctive relief, (3) granting the injunction will not result in even greater harm to the defendants, and (4) the injunction is in the public interest, see Rogers v. Corbett, 468 F.3d 188, 192 (3d Cir. 2006); P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC, 428 F.3d 504, 508 (3d Cir. 2005) (explaining that the burden of demonstrating each element falls upon the movant), that he has not demonstrated a reasonable probability of success on the merits of the litigation, (see Doc. 100 at 3-4 (explaining that ultimate disposition of the matter will depend upon the resolution of multiple credibility disputes)), and that he has not shown the immediate necessity of injunctive relief,

(see id. at 4 (explaining that Collins’ employment discrimination claim may ultimately be remedied by monetary damages)), and it further appearing that neither party has objected to the magistrate judge’s recommendation, and that there is no clear error on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit Court of Appeals expects district courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b) advisory committee’s note; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that when parties do not object to a report and recommendation, the court’s review is conducted under the “plain error” standard, pursuant to which “the error must have been ‘clear’ or ‘obvious’ and seriously affect[s] the fairness or integrity of the judicial proceedings”); Cruz v. Chater, 990 F. Supp. 375, 375-78 (M.D. Pa. 1998) (holding that the district court is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review an unobjected-to report for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.

recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report (Doc. 100) of the magistrate judge is ADOPTED.
2. The motion (Doc. 86) for preliminary injunctive relief is DENIED.
3. The above-captioned case is REMANDED to the magistrate judge for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge